IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST.NO.10791 OF 2006
WITH
CIVIL APPLICATION ST.NO.10795 OF 2006

Bechanprasad G. Tiwari. ..Appellant.

V/s.

Municipal Corpn. of Gr.Mumbai. ..Respondent.

Mr.Kapil N. Gor for appellant.

Mrs. Geeta Jogalekar for BMC.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 28, 2006.

P.C. :

1. Heard counsel for the parties. Perused the material on record. After going through the documents which are pressed into service in the shape of assessment receipt, shop establishment licence, electrical bill and application for repair submitted by the appellant to the Corporation, I see no reason to depart from the finding reached by the Court below that none of the documents would show that the structure in question has been erected on the basis of any approved plan after taking prior permission of the authority. That finding if upheld, as I am inclined to do, the question of interfering in this appeal does not arise.

2. Counsel for the appellant contends that the appellant had made representation to the concerned Ward officer and the concerned Ward officer has assured him to consider the said representation. This position is disputed by the counsel appearing for the Corporation. There is nothing on record that Ward officer has assured the appellant that the fresh representation, if made, will be considered on its own merits. In the present case, Assistant Municipal Commissioner has considered the matter after response was received from the appellant on service of show cause notice under section 351 of the Act. Once the Assistant Municipal Commissioner has considered the matter, question of giving assurance by Ward Officer does not arise.

3. Viewed thus, I find substance in the argument of the respondent corporation that the fact, which is now stated across the bar on behalf of the appellant- of some assurance given by the Ward Officer is nothing but ipse-dixit of the appellant. Suffice it to observe that no fault can be found in the proposed action of the authority on the basis that the suit structure is unauthorised. Neither of the documents pressed into service will be of any avail to the

appellant. The documents at best would relate back to year 1982. The fact remains that the structure was not in existence prior to 1962, which is the datum line; in which case possible argument of structure being protected also cannot be entertained. Hence this appeal should fail. The same is dismissed.

4. However, by way of indulgence, Corporation shall not proceed to take steps with regard to the suit structure for a period of two week from today.

5. Civil application also disposed of accordingly.